# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION II .

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IN THE MATTER OF THE CARROLL & DUBIES SUPERFUND SITE	
CARROLL & DUDIES SUFERFUND SITE	
	) <u>SECOND AMENDMENT TO</u>
CARROLL & DUBIES SEWAGE DISPOSAL, INC.;	) ADMINISTRATIVE ORDER
KOLMAR LABORATORIES, INC.; and	)
WICKHEN PRODUCTS, INC.,	U.S. EPA INDEX NO.
	) II-CERCLA-95-0221
Respondents.	)
	04-1995-0317
Proceeding Under Section 106(a) of the	)
Comprehensive Environmental Response,	)
Compensation, and Liability Act of 1980,	)
as amended (42 U.S.C. § 9606(a)).	, ,
	,
	<b>,</b>

#### I. JURISDICTION

1. Administrative Order Index Number II-CERCLA-95-0221 ("Order") was issued by the United States Environmental Protection Agency ("EPA") to Carroll & Dubies Sewage Disposal, Inc. ("C&D"), Kolmar Laboratories, Inc. ("Kolmar") and Wickhen Products, Inc. ("Wickhen") (collectively referred to as the "Respondents") on September 29, 1995. The Order was amended ("Amendment") on June 13, 1997. The Order and Amendment were issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §9606(a), which authority was delegated to the Administrator of the EPA by Executive Order 12580, dated January 23, 1987, and redelegated to the Regional Administrator of EPA, Region II. Pursuant to Section 106(a) of CERCLA, the New York State Department of Environmental Conservation has been notified of the Order, the Amendment and this Second Amendment. As revised by this Second Amendment, the Order and Amendment remain in full force and effect.

#### **II. SECOND AMENDMENT**

- 2. Consistent with the Explanation of Significant Differences ("ESD") (attached hereto as Appendix I) issued by EPA on August 24, 1998, pursuant to Section 117(c) of CERCLA, 42 U.S.C. §9617(c), the Order is hereby amended as follows:
  - a. Paragraph 1, first sentence, as amended by the Amendment, is hereby

deleted and replaced with the following:

This Order directs Carroll & Dubies Sewage Disposal, Inc. ("Carroll & Dubies"), Kolmar Laboratories, Inc. ("Kolmar") and Wickhen Products, Inc. ("Wickhen") (collectively, the "Respondents") to perform the remedial design for the remedy described in the United States Environmental Protection Agency's ("EPA's") March 31, 1995 Record of Decision ("OU1 ROD") as modified by the August 24, 1998 Explanation of Significant Differences ("ESD"), and the September 30, 1996 Record of Decision ("OU2 ROD") for the Carroll & Dubies Superfund Site (the "Site") in the town of Deerpark, Orange County, New York, and to implement the design by performing the remedial action.

b. A new paragraph 11A is hereby added as follows:

Based on information obtained during the remedial design of the OU1 ROD remedy, EPA issued the ESD modifying the OU1 ROD. The modified remedy includes the following: 1) excavation of all nonhazardous impacted soil, sewage sludge, septage waste, and municipal solid waste and disposal of the excavated material at a permitted off-Site solid waste facility; 2) excavation, treatment and disposal of all industrial waste at a permitted off-Site hazardous waste facility; 3) excavation, treatment, and disposal of soil and sludge which fail the RCRA Toxicity Characteristic Leaching Procedure ("TCLP") at a permitted off-Site hazardous waste facility; 4) treatment of selected excavated soil and interbedded wastes which contain volatile organic compounds by ex-situ soil vapor extraction, followed by disposal at a permitted off-Site hazardous waste facility; 5) treatment of contaminated subsurface soil by in-situ soil vapor extraction, if practicable; 6) development of an air-monitoring system and installation of air pollution control equipment to ensure compliance with air pollution control regulations; 7) backfilling and regrading of excavated areas with clean soil; and 8) confirmatory sampling to demonstrate compliance with the excavation levels specified in the OU1 ROD.

c. Paragraph 12 is hereby deleted and replaced with the following:

EPA's OU1 ROD and ESD, and OU2 ROD are supported by an administrative record that contains the documents and information upon which EPA based the selection of the response actions.

d. Paragraph 17, as amended by the Amendment, is hereby deleted and replaced with the following:

Actual or threatened releases of hazardous substances at and from the Site, if not addressed by implementing the response actions selected in the OU1 ROD (with respect to the Performance Standards), the OU1 ROD as modified by the ESD, and the OU2 ROD, may present an imminent and substantial endangerment to the public health, welfare or the environment.

- e. Paragraph 27, as amended by the Amendment, is hereby further amended as follows:
  - 1. Subparagraph j. is hereby deleted and replaced with the following:

"Performance Standards" means those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in or referenced in the OU1 ROD, the Remedial Design Report prepared by Shield Environmental Associates, Inc. on behalf of Kolmar and Wickhen, and approved by EPA on September 29, 1998, and the OU2 ROD or which are otherwise approved by EPA in writing during the course of the Work. Requirements promulgated or modified after the issuance of the OU1 and OU2 RODs may become Performance Standards pursuant to Section 300.430(f)(1)(ii)(B) of the NCP.

2. Subparagraph l. is hereby deleted and replaced with the following:

"Remedial Action" or "RA" means the remedy authorized by the OU1 ROD (with respect to Performance Standards), the OU1 ROD as modified by the ESD, and the OU2 ROD, as further delineated in this Order and in the various EPA-approved plans referred to below.

3. Subparagraph t., which was added by Paragraph II.2.g.4. of the Amendment, is hereby deleted and replaced with the following:

"This Order" or "the Order" shall mean the Order dated September 29, 1995, Index No. II-CERCLA-95-0221, the Amendment dated June 13, 1997 and this Second Amendment.

4. A new subparagraph u. is hereby added as follows:

"ESD" or "Explanation of Significant Differences" means the ESD which was issued by EPA on August 24, 1998 and which modified the OU1 ROD.

5. A new subparagraph v. is hereby added as follows:

"OU1 Remedial Action" means the remedy authorized by the OU1 ROD (with respect to Performance Standards) and the OU1 ROD as modified by the ESD.

6. A new subparagraph w. is hereby added as follows:

"OU2 Remedial Action" means the remedy authorized by the OU2 ROD.

7. A new subparagraph x. is hereby added as follows:

"Second Amendment" means this amendment to the Administrative Order, Index No. II-CERCLA-95-0221 which was previously amended by an Amendment dated June 13, 1997.

f. Paragraph 36, as amended by the Amendment, is hereby deleted and replaced with the following:

The Work to be performed by Respondents pursuant to this Order shall, at a minimum, achieve the requirements of the OU1 ROD (with respect to Performance Standards), the OU1 ROD as modified by the ESD, the OU2 ROD, and the approved Remedial Design Report, and be performed in a manner consistent with the OU1 ROD (with respect to Performance Standards), the OU1 ROD as modified by the ESD, the OU2 ROD, and the approved Remedial Design Report. Nothing in this Order or the plans or other documents required to be submitted pursuant to this Order, or EPA's approval of those plans or other documents, constitutes a warranty or representation of any kind by EPA that compliance with those plans and this Order will achieve the requirements of the OU1 ROD (with respect to the Performance Standards), the OU1 ROD as modified by the ESD, and the OU2 ROD and such compliance shall not foreclose EPA from seeking performance of additional work to achieve the Performance Standards set forth in the OU1 and OU2 RODs or other requirements of the OU1 ROD as modified by the ESD and the OU2 ROD.

g. Paragraph 37 of the Order as amended by Paragraph II.2.c. and II.2.j. of the Amendment, is hereby deleted and replaced with the following:

Scope of Work. The Work to be performed by Respondents pursuant to

#### this Order shall include:

- Soil sampling as required to further delineate the extent of source area contamination that exceeds the excavation criteria established in the OU1 ROD and the approved Remedial Design Report;
- ii. Excavation of all materials from lagoons 1, 2, 3, 4, 6, 7 and 8, as well as the soils near those lagoons that exceed the specified excavation criteria. Excavation depth will not exceed the depth to groundwater;
- iii. Subsurface soil impacted by volatile organic compounds ("VOCs") will be treated using in-situ soil vapor extraction ("SVE") to reduce VOC levels to below the excavation criteria if it is determined (based on the depth, distribution and volume of impacted subsurface soil as determined by soil sampling) that this treatment is more practicable than excavation and off-Site disposal of these materials;
- iv. Disposal of all nonhazardous impacted soil, municipal sewage sludge, septage waste, and municipal solid waste at a permitted off-Site solid waste management facility;
- v. Treatment and disposal of all industrial waste, interbedded waste, and municipal waste and soils impacted by industrial wastes, at a permitted off-Site hazardous waste management facility;
- vi. Treatment and disposal of soil and sludge which fail the Resource Conservation and Recovery Act's TCLP levels for inorganic constituents at a permitted off-Site hazardous waste management facility;
- vii. Treatment of selected excavated soil and interbedded wastes that contain VOCs by ex-situ SVE, followed by disposal at a permitted off-Site hazardous waste management facility;
- viii. Development of an air monitoring system and installation of air pollution control equipment to ensure compliance with air pollution control regulations;
- ix. Backfill and regrade of excavated areas with clean soil;

- x. Confirmatory sampling and analysis to demonstrate compliance with the excavation levels specified in the OU1 ROD and the approved Remedial Design Report;
- xi. Implementation of a semi-annual groundwater monitoring program to evaluate the rate and extent of reduction of the organic contaminants in the groundwater and to assess natural attenuation parameters;
- xii. Implementation of a monitoring program to sample surface water and sediments in Gold Creek, south of the Site; and
- xiii. Implementation of institutional controls for purposes of imposing restrictions on the installation and use of groundwater wells at the Site.
- h. Paragraph 38 is hereby amended as follows:
  - 1. Subparagraph a.ii(2) is hereby deleted.
  - 2. Subparagraph a.iii(1)(c) is hereby deleted.
  - 3. Subparagraph a.iii.(3)(b) is hereby deleted and replaced with the following:

A draft Operation and Maintenance Plan ("O&M Plan"). The draft O&M Plan shall include, inter alia, a discussion of how the equipment constructed or installed pursuant to the Order shall be maintained at operating efficiency. In addition, the draft O&M Plan shall conform with EPA guidelines contained in "Considerations for Preparation of Operation and Maintenance Manuals" (EPA 6801-0341).

4. Subparagraph a.iii.(3)(e) is hereby deleted and replaced with the following:

A plan for establishing institutional controls identified in EPA's ROD (i.e., declarations of covenants, conditions and restrictions and other requirements and controls for purposes of imposing restrictions on the installation and use of groundwater wells at the Site);

i. Paragraph 39 is hereby amended as follows:

- 1. Subparagraph a.i. is hereby deleted and replaced with the following:
  - On December 3, 1998, EPA approved a Remedial Action Work Plan for the Site. Said Remedial Action Work Plan is incorporated into and is enforceable under this Order.
- 2. Subparagraph b.ii. is hereby redesignated as b.iii.
- 3. Insert the following as new subparagraph b.ii:

## Independent Quality Assurance Team

The Respondent shall retain an Independent Quality Assurance Team ("IQAT"). The IQAT is used to assure that the selected remedy is constructed to meet project requirements. The IQAT implements the Construction Quality Assurance Plan by selectively testing and inspecting the Work of the contractor(s). The IQAT is required to be "independent" and autonomous from the Remedial Contractor, and may come from within the ranks of the Respondents' own staffs, the Remedial Design professional organization, or through a separate contractual relationship with a private consulting entity. EPA's approval will be based on professional and ethical reputation, previous experience in the type of quality assurance activities to be implement, and demonstrated capability to perform the required activities. In addition, EPA's approval will be based on the requirement of independence between the IQAT and the Remedial Contractor. The submitted information about the IQAT contractor shall include a written statement of qualification in sufficient detail to allow EPA to make a full evaluation of the contractor's qualifications and facilities. [done]

- 4. Subparagraph b.iii. is hereby redesignated as subparagraph b.iv.
- 5. Subparagraph c is hereby deleted and replaced with the following:

#### Pilot Test Program

i. Within twenty-one (21) days following Respondents' notification to EPA, pursuant to the Remedial Action Work Plan, that it may be more practicable to treat the subsurface soil beneath the lagoons impacted by volatile organic compounds via in-situ SVE (the "Subsurface Soil Remedy"), Respondents shall submit to EPA for review and

approval a draft program for start-up and initial testing (the "Pilot Test") of the in-situ SVE. This draft program shall demonstrate whether the treatment units will be capable of meeting the Performance Standards established in the OU1 ROD and the other requirements of the OU1 ROD (as amended by the ESD) and the EPA-approved RD Report, and operate in a manner that is protective of human health and the environment.

- ii EPA will either approve the Pilot Test Program, or will require modifications of it, in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order.
- iii. Within ten (10) days of Respondents' receipt of EPA's approval of the Pilot Test Program, Respondents shall commence implementation of the EPA-approved Pilot Test Program, or any approved portion thereof.
- iv. Within forty (40) days of completion of the Pilot Test Program or EPA-approved portion thereof, Respondents shall submit to EPA an addendum to the EPA-approved RD Report. The addendum to the RD Report shall include the following: the results of the Pilot Test Program, including the laboratory data and all QA/QC documentation, the design of the in-situ SVE, an O&M plan for the in-situ SVE, and the certification of a New York State-licensed professional engineer that operation of the Subsurface Soil Remedy conforms with the requirements of the EPAapproved RD Report and is able to achieve the Performance Standards established in the OU1 ROD. EPA will either approve the addendum to the RD Report or will require modification of it, in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order.
- v. If EPA determines that the operation of the Subsurface Soil Remedy does not or will not satisfy the requirements of the RD Report and addendum or achieve the Performance Standards or cannot be operated in a manner that is protective of human health and the environment, within fourteen (14) days of Respondents' receipt of such determination, Respondents shall submit to EPA a proposal (the "Modification Proposal") for modifying the Subsurface

Soil Remedy, or any component(s) thereof, in order to correct such deficiencies. The Modification Proposal shall include a detailed analysis of nonconforming elements and a proposal and schedule for bringing those elements into conformance, and for additional pilot testing, if necessary. EPA will either approve the Modification Proposal or will require revisions thereof, in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order.

- vi. Within fifteen (15) days of Respondents' receipt of EPA approval of the Modification Proposal, Respondents shall commence implementation of the Modification Proposal in accordance with the schedule contained therein.
- j. Paragraph 41 is hereby deleted, replaced with the following and redesignated as Paragraph 40:

### Start-up and Operation of the Subsurface Soil Remedy

- a. If the Pilot Test Program indicates that the treatment systems are expected to satisfy the Performance Standards established in the OU1 ROD and are consistent with the requirements of the RD Report and addendum, the OU1 ROD (as amended by the ESD) and this Order, EPA will so notify Respondents and will give Respondents written authorization to commence implementation of the Remedial Action for the Subsurface Soil Remedy (hereinafter, "Start-Up Approval"). If EPA determines that the Soil Remedy does not so conform, EPA will so notify Respondents, and Respondents shall proceed as further directed by EPA.
- b. Within seven (7) days of Respondents' receipt of EPA Start-Up Approval of the Subsurface Soil Remedy, Respondents shall commence the Subsurface Soil Remedy in accordance with this Order and the EPA-approved addendum to the RD Report.
- c. Unless otherwise directed by EPA, Respondents shall not commence operation of the Subsurface Soil Remedy until Respondents receive Start-Up Approval for the Subsurface Soil Remedy from EPA.
- d. Respondents shall operate the equipment necessary to implement the requirements contained in the EPA-approved RD Report and addendum thereto and this Order. Operation, and sampling and

monitoring in accordance with the EPA-approved SAMP, shall continue until EPA determines that the Performance Standards established in the OU1 ROD have been met.

j. Paragraph 40 is hereby deleted, replaced with the following and redesignated as Paragraph 41:

## Pre-Certification and Final Certification Inspections

- 1. Within 14 days after Respondents conclude that the OU1 Remedial Action has been fully performed and the Performance Standards set forth in the OU1 ROD have been attained, Respondents shall schedule and conduct a pre-certification inspection. Respondents and Respondents' Supervising Contractor shall be available for a pre-certification inspection in conjunction with EPA and/or EPA's designated representatives and the State and/or its designated representatives. EPA will consult with Respondents and/or their representatives to determine a mutually agreeable time for EPA's performance of the pre-certification inspection within the aforementioned 14-day period. The pre-final certification inspection will consist of a walk-through of the project to determine the completeness of the OU1 Remedial Action and its consistency with the Final RD Report as it relates to OU1, the Remedial Action Work Plan as it relates to OU1, and this Order. If EPA requires corrective measures to be performed by Respondents, EPA will notify Respondents in writing in accordance with this Order, of the activities that must be undertaken to complete the OU1 Remedial Action and achieve the Performance Standards set forth in the OU1 ROD. Within fourteen (14) days after completion of such corrective measures, Respondents and their contractor shall be available to accompany EPA personnel and/or its representatives on a final OU1 certification inspection. Respondents shall also provide the State with advance notification of such inspections. If EPA does not require any corrective measures subsequent to the prefinal certification inspection, then the pre-final certification inspection shall be the final certification inspection for OU1.
- 2. Respondents shall notify EPA within seven (7) days after receiving data showing that the Performance Standards set forth in the OU2 ROD have been met for the fifth consecutive year (or a shorter period if approved by EPA in its sole discretion). Within twenty-one (21) days of this notification, Respondents shall schedule and conduct an inspection to be attended by Respondents, EPA, the State, and/or their respective representatives. The inspection will

consist of a walk through to determine the completeness of the OU2 Remedial Action and its consistency with the OU2 ROD and this Order. If EPA requires corrective measures to be performed by Respondents, EPA will notify Respondents in writing in accordance with this Order, of the activities that must be undertaken to complete the OU2 Remedial Action and achieve the Performance Standards set forth in the OU2 ROD. Within fourteen (14) days after completion of such corrective measures, Respondents and their contractor shall be available to accompany EPA personnel and/or its representatives on a final certification inspection. Respondents shall also provide the State with advance notification of such inspections. If EPA does not require any corrective measures subsequent to the OU2 pre-final certification inspection, then the pre-final certification inspection shall be the final certification inspection for OU2.

- k. Paragraph 43 is hereby amended by replacing all references to "Initial Testing Program" with "Pilot Test Program".
- 1. Paragraph 44 is hereby amended by deleting "integrity of any containment system".
- m. Paragraph 73, as amended by the Amendment, is hereby further amended by inserting "as modified by the ESD" after each and every reference to "OU1 ROD" everywhere "OU1 ROD" appears.
- n. Paragraph 74, as amended by the Amendment, is hereby further amended by inserting "as modified by the ESD" after each and every reference to "OU1 ROD" everywhere "OU1 ROD" appears.
- o. Paragraph 74, as amended by the Amendment, is hereby further amended by deleting subparagraph 74.a.ii.

## III. NOTICE OF INTENT TO COMPLY

3. Not later than five (5) days after the effective date of this Second Amendment, Respondents shall provide written notice to EPA's RPM stating whether they will comply with the terms of this Second Amendment. If Respondents do not unequivocally commit to perform the Work as provided by this Second Amendment, they shall be deemed to have violated the Order and to have failed or refused to comply with the Order. Respondents' written notice shall describe, using facts that exist on or prior to the effective date of this Second Amendment, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the

an inspection to be attended by Respondent, EPA, the State, and/or their respective representatives. The inspection will consist of a walk through to determine the completeness of the OU2 Remedial Action and its consistency with the OU2 ROD and this Order. If EPA requires corrective measures to be performed by the Respondent, EPA will notify the Respondent in writing in accordance with this Order, of the activities that must be undertaken to complete the OU2 Remedial Action and achieve the Performance Standards set forth in the OU2 ROD. Within fourteen (14) days after completion of such corrective measures, Respondent and its contractor shall be available to accompany EPA personnel and/or its representatives on a final certification inspection. Respondent shall also provide the State with advance notification of such inspections. If EPA does not require any corrective measures subsequent to the OU2 pre-final certification inspection, then the pre-final certification inspection shall be the final certification inspection for OU2.

- n. Paragraph 46 is hereby amended by replacing all references to "Initial Testing Program" with "Pilot Test Program".
- o. Paragraph 74 is hereby amended by inserting "as modified by the ESD" after each and every reference to "OU1 ROD" everywhere "OU1 ROD" appears.
- p. Paragraph 75 is hereby amended by inserting "as modified by the ESD" after each and every reference to "OU1 ROD" everywhere "OU1 ROD" appears.
- q. Paragraph 75 is hereby further amended by deleting subparagraph 75.a.ii.

#### III. NOTICE OF INTENT TO COMPLY

3. Not later than five (5) days after the effective date of this Amendment, Respondent shall provide written notice to EPA's RPM stating whether it will comply with the terms of this Amendment. If Respondent does not unequivocally commit to perform the Work as provided by this Amendment, it shall be deemed to have violated the Order and to have failed or refused to comply with the Order. Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Amendment, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be an acceptance of Respondent's assertions.

# IV. EFFECTIVE DATE AND CONFERENCE OPPORTUNITY

- 4. This Second Amendment shall be effective fourteen (14) calendar days from the date of issuance of this Second Amendment, unless Respondents request a conference pursuant to Paragraph 5 below. If such a conference is timely requested, this Second Amendment to the Order shall become effective three (3) calendar days following the date the conference is held, unless the effective date is modified by EPA.
- 5. Respondents may, within thirteen (13) calendar days of the date of issuance of this Second Amendment, request a conference with EPA to discuss this Second Amendment. If requested, the conference shall occur within seven (7) calendar days of the Respondents' request for a conference.
- 6. The purpose and scope of the conference shall be limited to issues involving the implementation of the work required by this Second Amendment and the extent to which Respondents intend to comply with this Second Amendment. The conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Second Amendment. The conference does not give Respondents a right to seek review of this Second Amendment, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to the Respondents' request, the Respondents may appear in person or by an attorney or other representative.
- 7. Requests for a conference shall be made by telephone to Sharon E. Kivowitz, Assistant Regional Counsel, (212) 637-3183, followed by written confirmation mailed that day to Ms. Kivowitz at the Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York 10007.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Regional Administrator

U.S. Environmental Protection Agency

Region II